

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## RUSSELL DENNEWITZ,

Case No. 2:14-CV-2111 JCM (VCF)

Plaintiff(s),

## ORDER

V.

## MANDALAY CORP.,

Defendant(s).

Presently before the court is plaintiff Russell Dennewitz's motion for leave to amend complaint. (Doc. # 10). Defendants Mandalay Corp., et al., have not filed a response and the deadline to do so has passed.

Also before the court is defendants' motion to dismiss. (Doc. # 6). Plaintiff filed a response (doc. # 9), and defendants filed a reply (doc. # 11).

Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should freely give leave [to amend] when justice so requires,” and when there is no “undue delay, bad faith [,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of . . . the amendment, [or] futility.” Fed.R.Civ.P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182, 222 (1962).

Generally, leave to amend is denied only when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). As stated above, defendants have failed to file any response in opposition to plaintiff's motion for leave to amend complaint. Local Rule 7-2(d) provides that "failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." LR 7-2(d). Therefore, defendants have consented to plaintiff's motion for leave to amend.

Because defendants' motion to dismiss (doc. # 6) is based on the allegations of the original complaint, the court will deny defendants' motion to dismiss as moot.<sup>1</sup>

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for leave to amend complaint (doc. # 10) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that defendants' motion to dismiss (doc. # 6) be, and the same hereby is, DENIED as moot.

DATED March 12, 2015.

Xem C. Mahan  
UNITED STATES DISTRICT JUDGE

<sup>1</sup> In granting plaintiff's motion to amend, the court offers no comment as to whether plaintiff's amended claims are sufficient to withstand dismissal or summary judgment.